

Quantum Resources Corporation and Florida Power & Light Company and Local 1191 of the International Brotherhood of Electrical Workers, Petitioner and Local 820 of the International Brotherhood of Electrical Workers, Petitioner and Local 1042 of the International Brotherhood of Electrical Workers, Petitioner.
Cases 12-RC-7283, 12-RC-7284, and 12-RC-7285

November 29, 1991

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

The sole issue before us in this case is whether Quantum Resources Corporation (Quantum) and Florida Power & Light Company (FP&L) are joint employers of the employees in the petitioned-for units.¹

On October 4, 1990, the Regional Director for Region 12 of the National Labor Relations Board issued his Decision and Direction of Elections in the above-titled proceeding. The Regional Director found Quantum and FP&L to be joint employers. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, both Quantum and FP&L filed timely requests for review of the Regional Director's decision. In their requests for review, both Quantum and FP&L contend that they are not joint employers of the employees in question. Instead, they argue that the employees are employed solely by Quantum. On November 19, 1990, the National Labor Relations Board granted the requests for review limited to the joint-employer issue.² All parties filed briefs on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the entire record in this case, including the briefs of the parties, and has decided to affirm the Regional Director's findings and conclusions, as further supported by additional record

evidence described below. The Board makes the following findings.

I. BACKGROUND

Since 1986³ FP&L has contracted with Quantum to provide certain maintenance and development functions at FP&L's "land utilization" areas adjacent to its powerplants⁴ Three of those sites, Manatee (in Parrish, Florida), Martin (in Indiantown, Florida), and Sanford (in Lake Monroe, Florida), all fossil-fuel based plants, are involved in the present proceeding. The land utilization areas at those sites contain the cooling facilities and surrounding property for each of the three plants.

FP&L's "Land Utilization Department" oversees these properties, under the control of the manager of land utilization and the superintendent of sites. Each site is overseen by an FP&L site superintendent who resides there. Other FP&L personnel also work at each of the three sites.

A Quantum foreman at each site reports to FP&L supervisors and the site superintendent concerning daily operations and management matters. In addition, Quantum foremen report through a chain of command to Quantum's Florida branch manager, who reports to Quantum's senior vice president in Virginia. Quantum's Florida branch manager is primarily involved with administering the contract between the two employers, rather than in any direct supervision of the daily activities of the unit employees; he seldom visits the sites. Thus, at each site, the unit personnel are principally supervised by the on-site Quantum foremen, FP&L supervisors, and the resident FP&L site superintendent.

Unit clerical employees work side-by-side with FP&L clericals and report interchangeably to FP&L and Quantum supervisors. The Martin site superintendent's personal secretary is a unit employee. Field technicians perform their monitoring and inspection work according to FP&L schedules and specifications, and regularly report to FP&L personnel. Mechanics follow computer-generated and oral FP&L instructions and orders. The mechanics regularly work in FP&L's automotive department. Unit employees also perform their work according to instructions from FP&L manuals.

¹ The Regional Director's unit determination is not disputed. The Regional Director found that the following employees constitute three separate units appropriate for the purpose of collective bargaining within the meaning of Sec. 9(b) of the Act: all production and maintenance employees employed by the Employers, jointly, at the land utilization sites located at FP&L's Martin, Manatee, and Sanford facilities, located in Indiantown, Parrish, and Lake Monroe, Florida, respectively.

Included among the three geographically separate units of employees are the following job classifications: utility helpers, utility drivers, tool room attendants, laboratory technicians, environmental specialists, equipment operators, mechanics, office clericals, and plant clericals. Excluded are foremen, senior environmental scientists, guards and supervisors as defined in the Act.

² An election was held on November 1, 1990, in the three separate units found appropriate by the Regional Director. The ballots were impounded.

³ The two companies' first contract covered the period from 1986 through 1989; they then renewed the contract for the period from July 1, 1989, through June 30, 1992.

⁴ The Regional Director described Quantum's functions under the contract as follows: "Quantum provides FP&L with personnel who monitor and maintain the water reservoirs, cooling ponds and adjacent areas of land at [the sites]. Generally, the land utilization personnel perform various inspections of the areas; maintain and repair site equipment and structures, including the drainage systems; perform construction projects and landscaping at the sites; perform herbicide control of aquatic and terrestrial plants; collect performance and maintenance data; generate reports for submission to FP&L, and Federal and State agencies; operate concessions; and compile the supporting paperwork for these tasks."

Several unit employees testified that they and others regularly are directed by FP&L managers to do particular jobs, such as pick up items "in town" for FP&L use, repair equipment, or perform environmental-monitoring tasks.

A unit electrician and a unit carpenter each worked on a site superintendent's residence. Unit employees are required to participate with FP&L employees in FP&L's "Quality Improvement Program," which sponsors regular meetings to discuss ways to improve employees' performance, under the leadership of the site superintendents at each facility. FP&L awarded a coveted FP&L prize to a unit field technician for the best quality improvement effort.

The unit job descriptions originally were written by FP&L, and any changes in the employees' job responsibilities or titles must be approved by FP&L. FP&L must approve the hiring of unit personnel by executing an action form (called an "Agreement Covering Assignment of Temporary Personnel")⁵ with Quantum supervisors. Creation or deletion of a unit job similarly must be approved by FP&L through a "Delivery of Work Authorization" form. The record contains examples of a former site superintendent's involvement in decisions to hire, promote, and fire personnel in what are now unit positions.

Hours of work and holidays for unit employees and FP&L's other personnel largely coincide. The record discloses that on one occasion FP&L closed down a worksite for 2 weeks so that the unit employees who operated at that location could take their vacation. Quantum adopted verbatim FP&L's drug-use policy and is required to "assure" FP&L that unit employees pass tests mandated under that policy.

All overtime scheduled for unit employees (other than rare emergencies) must be approved by FP&L managers. FP&L has the authority to designate wage rates for each job category. FP&L must authorize changes in those wage rates, as well as any deviation from those ranges. The record lists an incident in which an FP&L site superintendent "got raises pushed through" for unit employees. FP&L site superintendents sign all unit employees' weekly timesheets. FP&L reimburses Quantum in full for insurance benefits earned by unit employees. FP&L includes the unit employees in its self-insured workers' compensation coverage. Finally, all equipment, tools, vehicles, fuel, uniforms, stationery, and other materials used by unit employees are provided by FP&L, and those items that are labelled are designated as belonging to FP&L.

⁵ All unit employees are designated in these forms as "temporary personnel," regardless of the expected length of their tenure.

II. THE RELATIONSHIP BETWEEN FP&L AND QUANTUM

The Regional Director found FP&L and Quantum to be joint employers based on, *inter alia*, his findings that FP&L:

[1] exercises substantial control over the hiring of Quantum employees . . . ; [2] retains substantial power to discipline and even to discharge Quantum employees . . . ; [3] sets the wage ranges within which Quantum employees are paid . . . ; [4] [must agree to Quantum requests] to modify the established wage ranges for its employees or to grant across-the-board wage increases . . . ; [5] [must authorize and approve] all overtime worked by Quantum employees . . . ; [6] [assigns] work to Quantum employees . . . ; [7] effectively establishes the work schedule and paid holidays of the Quantum employees . . . ; [and especially] [8] provides workers' compensation insurance coverage for Quantum employees.

It is apparent from these findings by the Regional Director, which are amply supported by the record, that FP&L has considerable direct involvement in the supervision of unit employees. Some examples of the evidence on which we rely, discussed more fully above in section I, include the fact that FP&L site superintendents and their assistants closely and routinely supervise unit clerical workers and mechanics and, often, field technicians and others⁶ Not only are unit employees regularly directed by FP&L managers to perform particular tasks, but FP&L determines much, if not most, of the specifications, scheduling, and priority of the unit employees' work. Further, FP&L requires unit employees to participate in its Quality Improvement Program together with its other employees. In short, FP&L, through the constant presence of the site superintendents and a high degree of detailed awareness and control of unit employees' daily activities, exercises substantial supervisory authority over unit employees.

In addition, we rely on FP&L's substantial control over the hiring, promotion, and the base wage rates, hours, and working conditions of unit employees, also described above. Among other ways, FP&L exerts this control by requiring the submission of forms for approval of changes in job duties or titles, levels of compensation, and the number of unit job lines at a site. FP&L also authorizes overtime, signs weekly timesheets, and, through its contract with Quantum,

⁶ While the reliance by mechanics and field technicians on FP&L computer-generated work orders and manuals in itself is not determinative of FP&L's joint-employer status (see, e.g., *Thums Long Beach Co.*, 295 NLRB 101 at 102 (1989) (Chairman Stephens, concurring), in this case that factor is only a minor element of an overall pattern of FP&L's directing and supervising unit employees.

codetermines hours, holidays, and benefits. Together with the close supervisory relationship between FP&L and unit employees, we find that these factors concerning wages and working conditions illustrate FP&L's joint-employer status.

On the record as a whole we agree with the Regional Director's decision and analysis that FP&L and Quantum "share [and] co-determine those matters governing the essential terms and conditions of employment." *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1124 (3d Cir. 1982).

III. FP&L'S OTHER ARGUMENTS

FP&L argues that this case resembles situations common, for example, in the construction industry, in which the primary contractor arranges for a subcontractor to perform certain specialized jobs on a project. Thus, to find joint-employer status here, FP&L asserts, would require similar findings throughout the construction industry and other industries that frequently employ such specialized contractual arrangements, thereby "disrupting stable and harmonious labor relations."

This case, however, differs significantly from cases relied on by FP&L. Unlike the situation in *International Shipping Assn.*, 297 NLRB 1059 (1990), for example, in which the Board refused to find joint-employer status in a contractor relationship, FP&L supervisors do exercise "a substantial degree of control over the manner and means" by which unit employees performed their jobs. Further, unlike the situation in *Laerco Transportation*, 269 NLRB 324, 325 (1984), FP&L supervisors are not "removed from some of the daily worksites of the employees." Also unlike *Laerco*, id. at 326, Quantum supervisors do not resolve "[a]ll major problems relating to the employment relationship."

International Shipping and *Laerco*, as well as other cases cited by FP&L are characterized by another factor that distinguishes them from this case. In those cases, one of the entities already had a collective-bargaining agreement with the employees' representative. Therefore, many of the terms and conditions of employment had been determined through a bilateral negotiation process that had not directly included the alleged joint employer. Here, by contrast, many of the terms and conditions of employment are explicitly written in the FP&L-Quantum contract. Cf. *Chesapeake Foods*, 287 NLRB 405, 407 (1987).

Quantum supervisors do not exercise independent authority to promote or otherwise provide extra incentives for their own employees. All such actions must be approved by FP&L. FP&L argues that Quantum submits personnel action forms as a matter of courtesy

or for billing notification purposes, not as a prerequisite to carrying out the action in question. We reject that argument, however, because the record contains scant evidence that Quantum makes significant personnel moves without the approval, in writing, of FP&L personnel. FP&L's assertion that it would not necessarily thwart such unilateral action, then, is untested and therefore insufficient as evidence of Quantum's autonomy.

Moreover, FP&L's "courtesy notification" idea would seem to be of recent vintage. In that regard, we find unpersuasive FP&L's argument that the actions of its supervisors concerning unit personnel during the term of its first contract with Quantum (1986-1989) should not be considered relevant here. Practices under the prior services contract are relevant to the extent they shed light on practices under the current similar contract, particularly as FP&L has not shown any substantial deviation or change from its prior practices. This is not to say that the conduct of its managers has remained totally unchanged. In this regard, we note uncontradicted record testimony that FP&L site superintendents and other supervisors were instructed at some point to be cautious in their speech and actions toward unit employees to avoid providing evidence of joint-employer status. Such changes, however, do not show a substantial change in actual practice.

Finally, FP&L objects to the Regional Director's interpretation of certain facts in the record. For example, FP&L argues that the Regional Director relied in part on the relationship between FP&L and a nominal Quantum employee who is not included in the bargaining unit. We do not agree that the Regional Director relied on this factor in his decision. We note, moreover, that there is ample uncontested evidence to support the joint-employer finding.

Conclusion

Because the evidence shows that FP&L exercises daily, regular oversight and close supervision over the employees in question, and that FP&L shares and codetermines with Quantum those matters governing the essential terms and conditions of employment for those employees, we find FP&L and Quantum to be joint employers. See *NLRB v. Browning-Ferris Industries*, supra. Accordingly, we shall remand the case to the Regional Director for further appropriate action.

ORDER

This case is remanded to the Regional Director for Region 12 for further appropriate action consistent with this Decision on Review and Order.